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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

ANNIE E. HARPER, et al., *Appellants,*

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al., *Appellees.*

On Appeal from the United States District Court for the Eastern District of Virginia

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JURISDICTIONAL STATEMENT

Appellants appeal from the final order dismissing the complaint, which was entered on November 10, 1964, by the District Court, comprised of three judges convened pursuant to Title 28, United States Code, Section 2284, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the Eastern District of Virginia, Alexandria Division, is not yet reported. The opinion and final order of the District Court are reprinted herein as Appendix B.

JURISDICTION

The jurisdiction of the District Court to decide the questions involved in this appeal was invoked under the Fourteenth Amendment to the United States Constitution, Title 42, United States Code, Section 1983, and Title 28, United States Code, Sections 1343(3), 2201 and 2202. The judgment of the District Court was entered on November 10, 1964, and notice of appeal was filed in that court on December 4, 1964. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). The Court's jurisdiction to review the case on direct appeal is sustained by *Baker* v. *Carr,* 369 U.S. 186, and *Reynolds* v. *Sims,* 377 U.S. 533.

QUESTIONS PRESENTED

I. Whether provisions of Virginia law which require the payment of poll taxes as a prerequisite to voting in state and local elections violate the Fourteenth Amendment by denying the franchise to paupers and indigents and other persons who are without economic means to pay the taxes, but who are otherwise qualified to vote.

II. Whether persons who brought suit contesting the constitutionality of Virginia laws requiring the payment of poll taxes as a prerequisite to voting in state and local elections on the ground that such requirement discriminatorily disenfranchises them and other persons similarly situated who are without economic means to pay such taxes, and whose standing to sue is challenged by the State on the ground that "paupers" are disqualified from voting under state law, are entitled to a judicial determination that the "pauper"

disqualification is invalid under the Fourteenth Amendment.

STATE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Virginia Constitution and of the State's statutes are set forth in Appendix A hereto.

STATEMENT

The appellants brought this action on behalf of themselves and others similarly situated, for the purpose of having declared unconstitutional and to enjoin the enforcement and execution of provisions of the Virginia Constitution and statutes which require the payment of poll taxes as a prerequisite to voting in state and local elections.[1] The appellants, in the District Court, also challenged the constitutionality of the provisions of Section 23 of the Virginia Constitution and Section 24-18 of the state Code which specify "paupers" as being disqualified from registering or voting in any election conducted in the State. The poll tax requirement and "pauper" exclusion were alleged by the appellants to be violative of the equal protection and due process clauses of the Fourteenth Amendment.

The appellants are citizens of the United States, and residents of Virginia and of Fairfax County within that State. They desire to register and vote in future state and local elections, and qualify to do so in every respect but one: they lack the economic means to pay the poll taxes required of them by the laws of Virginia.

Appellant Annie E. Harper is single; she formerly supported herself principally by doing household or

[1] The 24th Amendment to the United States Constitution prohibits a state from requiring payment of a poll tax as a condition of voting in elections to fill Federal offices.

domestic work; at present her sole regular income is derived from Federal social security benefits. Appellant Harper, because she has been a resident of Virginia for more than three years and has never paid poll taxes, is required by Virginia law to pay three years' back poll taxes ($1.50 a year), plus a five (5) percent penalty for late payment, or a total of $4.74, in order to register and qualify to vote in future state elections.

Appellant Gladys A. Berry is single; she is not gainfully employed and has no regular income; she provides day care for seven minor children, two of whom are her own and five of whom are the children of her two married daughters; both daughters are separated from their husbands and do household or domestic work to support themselves, appellant Berry, and said seven minor children. Appellant Berry, like appellant Harper, is disqualified from registering and voting in state elections in Virginia unless she pays three years' back poll taxes, plus 5 percent penalty, or a total of $4.74.

Appellant Curtis Burr works in the building and construction industry which is characterized by irregular employment because of weather conditions; in calendar 1963 his gross income was less than $5000. Appellant Curtis Burr's entire income is consumed in providing the necessities of life for his wife, appellant Myrtle L. Burr, and their nine (9) children. Although appellant Curtis Burr paid his poll taxes for 1961 and 1962, he did not pay the tax for 1963, and does not expect to be able to pay it hereafter, because of the low earnings received from his employment and the increasing cost of supporting his family, particularly as his children grow older. Since the annual poll tax in

Virginia is $1.50, plus 5 percent penalty for late payment, or a total of $1.58, in any year in which appellant Curtis Burr wishes to register and vote in a state election, he will have to show payment of three years' back poll taxes, plus penalties.

Appellant Myrtle L. Burr is supported by her husband, appellant Curtis Burr, whose annual income of less than $5000 is entirely consumed in providing the necessities of life for himself, his wife, appellant Myrtle L. Burr, and their nine children. Appellant Myrtle L. Burr, like appellants Harper and Berry, has been a resident of Virginia for more than three years, but because she has never paid poll taxes, she must pay a total of $4.74, in order to register and qualify to vote in state elections. If appellant Curtis L. Burr does not pay his poll taxes for 1964 and 1965, he will have to pay three years' cumulative taxes, plus penalties, for both himself and his wife, or a total of $9.48, before they will both be qualified to register and vote.

The appellees in this proceeding are the governmental boards and officers of the State of Virginia and Fairfax County, Virginia, who have responsibility under Virginia law to enforce the election laws by preventing persons who have not paid their poll taxes from voting in state and local elections.

This matter was heard on October 21, 1964, before a three-judge District Court convened pursuant to Title 28, United States Code, Section 2284.[2] On November 12, 1964, the Court rendered its decision and a final order denying the relief sought by the appellants. The District Court declined to hold the provisions of

[2] The case was consolidated for the purpose of hearing with a similar case (*Butts* v. *Harrison*, Civil Action No. 3346) then pending in the District Court.

Virginia law which require the payment of poll taxes as a prerequisite to registering and voting unconstitutional, for the stated reason that it was precluded from doing so by this Court's decision in *Breedlove* v. *Suttles*, 302 U.S. 277. The District Court also declined to hold the sections of state law barring "paupers" from registering and voting unconstitutional, on the ground that there was no showing of the disqualification being employed to prevent the appellants or members of their class from voting.

The ruling of the District Court upholding the constitutionality of the provisions of state law in question and refusing to enjoin their enforcement and execution constitutes the subject of this appeal.[3]

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. Provisions of Virginia Law Which Require the Payment of Poll Taxes as a Prerequisite to Voting in State and Local Elections Violate the Fourteenth Amendment By Denying the Franchise to Paupers and Indigents and Other Persons Who Are Without Economic Means to Pay the Taxes, But Who Are Otherwise Qualified to Vote

By requiring the payment of poll taxes as a condition of voting in state and local elections, Virginia prevents the appellants and other members of the class they represent from exercising the franchise. Indigents, paupers and other persons too poor to pay such taxes are effectively prevented from voting by virtue of the state laws in question. This state practice is directly contrary to the view explicitly stated by this

[3] The appellants, because of their poverty, were granted permission by the District Court to bring their suit in *forma pauperis*. The American Civil Liberties Union has provided volunteer attorneys to represent them and is paying their costs for the purpose of this appeal.

Court—that a person's exercise of the franchise may not be impaired because of his "economic status." *Reynolds* v. *Sims*, 377 U.S. 533, 566. As the Court noted in the *Reynolds* case, discrimination in voting on economic grounds is equally as invidious as discrimination based on place of residence, such as was there in issue, or discrimination based on race (citing *Brown* v. *Board of Education*, 347 U.S. 483). Also impermissible under our constitutional system is discrimination against a voter based on the nature of his employment. *Davis* v. *Mann*, 377 U.S. 678, 691. These proscriptions against discrimination in voting, as the Court has repeatedly emphasized, are based on the philosophy of political equality which is fundamental to our system of government. As was stated in *Wesberry* v. *Sanders*, 376 U.S. 1, 17, "No right is more precious in a free society than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights are illusory if the right to vote is undermined." The governing principle has been aptly summarized by the Court in the recurrent phrase, "one person, one vote." *Reynolds* v. *Sims*, *supra*, 377 U.S. at 558, quoting *Gray* v. *Sanders*, 372 U.S. 368 at 381. And see *Wesberry* v. *Sanders*, *supra*, 376 U.S. at 18.

The fact that a person may be too poor to pay a specified sum of money, is not a valid basis for denying him the franchise. This is the clear teaching of *Griffin* v. *Illinois*, 351 U.S. 12, and *Douglas* v. *California*, 372 U.S. 353 (both cases cited in *Reynolds* v. *Sims*, *supra*, 377 U.S. at 566). In the *Griffin* case, which involved the right of an indigent defendant to appeal his conviction even though he could not pay for a required record of the trial proceeding, the Court stated that

"a State can no more discriminate on account of poverty than on account of religion, race, or color." 351 U.S. at 17. And in the *Douglas* case, where it was held that an indigent person must be afforded counsel on his first automatic appeal from a criminal conviction, the Court stated that not to do so is to draw "an unconstitutional line * * * between rich and poor." 372 U.S. at 357. The same unconstitutional line between "rich and poor" is the obvious consequence of the Virginia poll tax law which establishes $1.50 as the minimum price a person must pay to vote in a given year, with an increased amount which may be as high as $4.74 ($9.48 for married couple) if one has lived in the State but not voted for the preceding three years.[4]

It cannot be gainsaid that as a result of Virginia's poll tax requirement, many persons who are otherwise qualified to vote are rendered ineligible solely because of their poverty. Thus, the class of persons represented by the appellants in this proceeding includes, *inter alia,* individuals who are without any economic means whatsoever and who are dependent for subsistence on relatives, friends, and in many instances, the public welfare. The class also includes many other persons who

[4] Dissenting members of the Court in the *Douglas* case asserted that there is no constitutional infirmity in "a law of general applicability that may affect the poor more harshly than it does the rich." 372 U.S. at 361. They cited examples of state-imposed levies which the citizen must pay in order to receive benefits and privileges which the state is not otherwise obligated to provide. The poll tax is not such a levy, however, for the inability to pay it deprives poor persons, otherwise qualified to vote, of a prerogative to which they are entitled in a democratic society. As the Court stated in the *Reynolds* case, *supra,* 377 U.S. at 555, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."

have some identifiable income or property, but whose lives are characterized by poverty to such a degree that they cannot afford to pay money for other than food, clothing, housing, medical care, and other absolute necessities of life. Many such individuals are employed in low paying jobs; others are unemployed much of the time; while others have minimal incomes in the form of social security benefits, retirement pensions, unemployment compensation, medical disability benefits, and the like.[5]

Breedlove v. *Suttles*, 302 U.S. 277, relied upon by the District Court, should not be considered controlling with respect to the issue here as to the constitutionality of a state's requiring poll tax payments as a prerequisite to voting. The *Breedlove* case did not resolve the question in the context in which it is raised here of whether persons may be discriminated against on economic grounds in determining eligibility to vote. Furthermore, the result reached in the *Breedlove* case is manifestly incompatible with more recent pronouncements by the Court concerning the limitations imposed by the Fourteenth Amendment against a state's use of arbitrary and irrational classifications as a basis for disenfranchising its residents. For this

[5] An annual income of $3000 for a family of four is generally recognized today as the boundary of poverty. *Annual Report of the Council of Economic Advisors to the President, January 1964*, p. 58 (Gov't. Print. Off.). The Federal Census for 1960 revealed 27.9 percent of all families in Virginia having incomes below that amount, and 17.4 percent of Virginia families having incomes below $2000. It is further significant that 22.4 percent of the white families in the State have incomes below the $3000 standard, while among nonwhite families the proportion receiving a substandard income is appreciably greater—54.1 percent. United States Department of Commerce, Bureau of the Census, *1960 Census of Population, Supplementary Report*, PC (S1)-43.

reason, the *Breedlove* decision, in the appellants' view, should be re-examined by the Court at this time.

The District Court, in its opinion, referred to the fact that the Virginia poll tax is assessed against every adult resident irrespective of his intent to vote, thereby suggesting that the purpose of the tax is primarily to raise money for the State, rather than to limit the electorate.[6] This rationalization, however, has been specifically disavowed by the Virginia Supreme Court of Appeals which stated in justification of the tax that its "imposition was not intended primarily for the production of revenue, but to limit the right of sufferage to those who took sufficient interest in the affairs of the State to qualify themselves to vote." *Campbell* v. *Goode,* 172 Va. 463, 2 S.E. 2d 456, 457.

In other words, according to the Virginia Supreme Court of Appeals, the State, by imposing the tax, intends to deny the vote to all persons, regardless of their economic circumstances, who fail to pay the requisite amount and thereby signify their disregard of the electoral process. Granted that the State is entitled to take reasonable measures "to promote intelligent use of the ballot" (*Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 51), it is clear that Virginia's justification for its poll tax requirement fails to satisfy the constitutional test of rationality. For, though the State professes to disqualify only those who are disinterested in voting, it is manifest that

[6] That the Virginia poll tax is not principally intended to serve as a source of revenue is evidenced by the fact that it does not become legally collectible, as do other Virginia taxes, at the time it becomes due. Section 22 of the State Constitution specifically provides against enforced collection of the poll tax by legal process until it has become three years past due.

among those disenfranchised are members of the large class of economically underprivileged who wish to vote and are responsible citizens, but who by virtue of their poverty cannot afford to pay the tax without sacrificing basic necessities of life. This being so, it cannot be doubted that the Fourteenth Amendment's guarantee of equal protection of law is offended insofar as indigents, paupers and others too poor to pay the tax are concerned. In other words, the State's classification bears no "reasonable and just relation to the act in respect to which classification is proposed * * *." *McLaughlin* v. *Florida*, No. 11, this Term, decided December 7, 1964, 85 S. Ct. 283, 287. The inability of an indigent person to pay the poll tax bears no more rational relationship to his interest in voting than does the ability to pay costs in advance bear any "rational relationship to a defendant's guilt or innocence * * *." *Griffin* v. *Illinois, supra,* 351 U.S. at 17-18.[7]

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[7] In *Baker* v. *Carr, supra,* 369 U.S. at 226, and subsequently in *Reynolds* v. *Sims, supra,* 377 U.S. at 557, the Court stated the standard of rationality which must be met under the Fourteenth Amendment as follows:

> Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action. (Emphasis the Court's)

II. Persons Who Brought Suit Contesting the Constitutionality of Virginia Laws Requiring the Payment of Poll Taxes as a Prerequisite to Voting in State and Local Elections on the Ground That Such Requirement Discriminatorily Disenfranchises Them and Other Persons Similarly Situated Who Are Without Economic Means to Pay Such Taxes, and Whose Standing to Sue Is Challenged by the State on the Ground That "Paupers" Are Disqualified from Voting Under State Law, Are Entitled to a Judicial Determination That the "Pauper" Disqualification Is Invalid Under the Fourteenth Amendment

As shown, Virginia, by requiring poll tax payments as a prerequisite to voting, denies the franchise to many persons who lack the economic means to pay the tax. As if to emphasize this unconstitutional delineation "between rich and poor" (*Douglas* v. *California*, *supra*, 372 U.S. at 357), Virginia has also written into its election laws a specific provision disqualifying "paupers" from registering or voting. This provision is so patently discriminatory, and hence invalid under the equal protection and due process clauses of the Federal Constitution, as to be unworthy of extended discussion.

Nevertheless, the State in apparent seriousness has, in this litigation, defended the constitutionality of the provision. The Virginia Attorney General, in his Answer on behalf of the appellee Virginia State Board of Elections, responded to the appellants' allegation of invalidity as to this provision by asserting that the "pauper" disqualification is "valid, constitutional and enforceable" (Answer filed June 29, 1964). Similarly, in the Attorney General's argument to the District Court one of his principal contentions was that the "pauper" disqualification is valid and that since the

appellants, by their own allegations of poverty, show themselves to be included within the term, they are not entitled to sue, because they would not be qualified to vote even in the absence of the poll tax. At the hearing before the District Court, the Attorney General asserted further that not only the appellants, but everyone in the large class of poor persons represented by them, would be subject to challenge at the polls on the basis of Virginia's "pauper" disqualification (Transcript of hearing, pp. 6-7, 14, 17, 23, 37).

With the issue thus joined, we submit that the District Court erred in dismissing the complaint with respect to this phase of the case. The assertion by the State that the disqualification applies to the appellants creates sufficient threat that they will be discriminatorily denied the franchise, to warrant a judicial declaration, as prayed for, that the provision is unconstitutional, as well as injunctive relief to restrain its enforcement. It is no answer to say, as the District Court did, that the appellants are without standing to challenge the "pauper" disqualification, because of the lack of showing that it has been employed in the past to prevent them or members of their class from voting. The record of this case shows that not only the poll tax requirement, but also the "pauper" disqualification, as construed by the State's Attorney General, are absolute barriers to exercise of the franchise by the appellants and members of their class. The two provisions are equally violative of the Fourteenth Amendment. The appellants in this litigation have demonstrated their entitlement to a declaration to this effect, as well as to appropriate injunctive relief.

CONCLUSION

It is submitted that the decision of the District Court should be reversed, for the reason that it conflicts with current understanding of the protections afforded by the Fourteenth Amendment, as propounded by this Court. The questions presented by this appeal are substantial and they are of public importance.

Respectfully submitted,

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January 1965.